

AMENDED IN ASSEMBLY APRIL 20, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 1516

Introduced by Assembly Member Lieu

February 27, 2009

An act to amend Section 1054.3 of the Penal Code, relating to criminal procedure.

LEGISLATIVE COUNSEL'S DIGEST

AB 1516, as amended, Lieu. Criminal procedure: discovery.

Existing law provides that no discovery shall occur in criminal cases except as provided by statute or as mandated by the Constitution of the United States. Under existing law, a defendant and his or her attorney are required to disclose to the prosecuting attorney any reports or statements of experts made in connection with the case, including the results of physical or mental examinations, scientific tests, experiments, or comparisons which the defendant intends to offer in evidence at the trial.

~~This bill would grant the prosecution access to a criminal defendant for the purposes of having a prosecution expert conduct a mental health examination whenever a defendant places his or her mental state at the time of the crime in issue by plea or by giving notice of his or her intention to call a mental health expert at trial. The bill would make the defendant's or his or her counsel's refusal to do so admissible as evidence at trial.~~

This bill would require the court to order a defendant in a criminal action or a minor in a juvenile delinquency proceeding to submit to examination by a prosecution-retained mental health expert whenever a defendant or minor, as specified, places in issue his or her mental

state at any phase of the criminal action or juvenile proceeding through the proposed testimony of any mental health expert. The bill would specify that its purpose is to respond to Verdin v. Superior Court (2008) 43 Cal.4th 1096, as specified.

This bill would amend Proposition 115, an initiative statute adopted by the voters at the June 5, 1990, statewide primary election, which provides that its provisions may be amended by the Legislature by a $\frac{2}{3}$ vote of the membership of each house.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1054.3 of the Penal Code is amended to
2 read:

3 1054.3. (a) The defendant and his or her attorney shall disclose
4 to the prosecuting attorney:

5 (1) The names and addresses of persons, other than the
6 defendant, he or she intends to call as witnesses at trial, together
7 with any relevant written or recorded statements of those persons,
8 or reports of the statements of those persons, including any reports
9 or statements of experts made in connection with the case, and
10 including the results of physical or mental examinations, scientific
11 tests, experiments, or comparisons which the defendant intends to
12 offer in evidence at the trial.

13 (2) Any real evidence which the defendant intends to offer in
14 evidence at the trial.

15 ~~(b) Whenever a defendant places his or her mental state at the~~
16 ~~time of the crime in issue by plea or by giving notice of his or her~~
17 ~~intention to call a mental health expert at trial, the defendant and~~
18 ~~his or her attorney shall, upon the prosecuting attorney's request,~~
19 ~~grant access for purposes of a mental health examination of the~~
20 ~~defendant by the prosecuting attorney's expert. The defendant's~~
21 ~~or his or her counsel's refusal to do so is admissible as evidence~~
22 ~~at trial.~~

23 *(b) (1) Unless otherwise specifically addressed by an existing*
24 *provision of law, whenever a defendant in a criminal action or a*
25 *minor in a juvenile proceeding brought pursuant to a petition*
26 *alleging the juvenile to be within Section 602 of the Welfare and*
27 *Institutions Code places in issue his or her mental state at any*

1 *phase of the criminal action or juvenile proceeding through the*
2 *proposed testimony of any mental health expert, upon timely*
3 *request by the prosecution, the court shall order that the defendant*
4 *or juvenile submit to examination by a prosecution-retained mental*
5 *health expert. The prosecution shall bear the cost of any such*
6 *mental health expert's fees for examination and testimony at a*
7 *criminal trial or juvenile court proceeding.*

8 *(2) The purpose of this subdivision is to respond to Verdin v.*
9 *Superior Court 43 Cal.4th 1096, which held that only the*
10 *Legislature may authorize a court to order the appointment of a*
11 *prosecution mental health expert when a defendant has placed his*
12 *or her mental state at issue in a criminal case or juvenile*
13 *proceeding pursuant to Section 602 of the Welfare and Institutions*
14 *Code.*